

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

LAMAR ADVERTISING CO.,	:	APPEAL NO. C-100834
	:	TRIAL NO. A-1011494
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
700 BROADWAY PARTNERS, LLC,	:	
and	:	
KZF DESIGN INC.,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Lamar Advertising Co. appeals the judgment of the Hamilton County Court of Common Pleas denying its motion for injunctive relief in a lawsuit against defendants-appellees 700 Broadway Partners, LLC, and KZF Design, Inc.

This case involves a dispute over the ownership and operation of a billboard. Lamar operated a billboard on a building owned by 700 Broadway and leased by KZF. The billboard was designated a nonconforming use by the city of Cincinnati and the Ohio Department of Transportation. Because the billboard was a nonconforming use, if it were to be removed from the 700 Broadway location, it could not be replaced at 700 Broadway or elsewhere.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

The billboard was the subject of a lease between Lamar and KZF. It was undisputed that, during the term of the lease, Lamar owned both the physical structure of the billboard and the right to operate it as a nonconforming use. The lease was terminated in 2008, and the parties thereafter entered into negotiations for a new lease agreement. The negotiations continued into 2010 without producing a new lease.

In late 2010, KZF entered into a new lease agreement with Orange Barrel Media, LLC, to operate the billboard. On December 23, 2010, Lamar filed suit, claiming that it continued to own both the billboard and the right to operate it as a nonconforming use. On the same day, Lamar filed a motion for a temporary restraining order to prevent KZF from making any alterations to the billboard. The trial court granted that motion.

Before KZF had filed an answer to the complaint, Lamar sought a preliminary injunction ordering KZF to permit Lamar to enter onto the premises and remove the billboard structure. At a hearing on the motion for injunctive relief, KZF disputed Lamar's continued ownership of the billboard and argued that monetary damages would be adequate to redress any claimed injury. The trial court denied the motion for injunctive relief, concluding that Lamar had failed to demonstrate that it would be irreparably harmed absent the requested injunction.

In a single assignment of error, Lamar argues that "[t]he trial court abused its discretion in denying plaintiff-appellant's request for a preliminary and permanent injunction to allow it to enter onto defendant-appellee's building to remove its billboard from the roof."

The party seeking a preliminary injunction must demonstrate by clear and convincing evidence that (1) there is a substantial likelihood that it will prevail on the merits; (2) it will suffer irreparable harm if the injunction is not granted; (3) no third parties will be unjustifiably harmed if the injunction is granted; and (4) the public

interest will be served by the injunction.² This court reviews a decision to deny a motion for a preliminary injunction under an abuse-of-discretion standard.³

In the case at bar, we find no abuse of discretion. First, we emphasize that the issue in the instant appeal is Lamar's claim that it had the immediate right to remove the physical structure of the billboard; the issue of who had the right to operate the billboard on the 700 Broadway building was reserved for trial.

Lamar contends that it needed the immediate ability to remove the billboard from the roof of the building to preserve its bargaining power in negotiating a new lease with KZF. Of course, Lamar's actual exercise of the right to remove the structure would extinguish its own ability to use the billboard, as well as the ability of anyone else to use it. Thus, the loss of the *threat* of removal is the claimed irreparable harm.

Lamar's argument is without merit. If Lamar prevails after a trial on the merits, it will be able to assert the exclusive right to use the billboard on the 700 Broadway property. Such exclusivity would provide Lamar leverage in negotiating a new lease with KZF. If KZF were unable reach a lease agreement with Lamar, it would lose the revenue that such a lease would provide, and it would be unable to replace that revenue by seeking another lessee.

And of course, if Lamar prevails on the merits, it will be able to use the threat of removing the structure at that time. Thus, the denial of the immediate possession of the physical structure was not fatal to Lamar's bargaining position. Lamar has therefore failed to demonstrate that it would suffer irreparable harm absent the requested injunction, and we overrule the assignment of error.

The judgment of the trial court is affirmed.

² *Convergys Corp. v. Tackman*, 169 Ohio App.3d 665, 2006-Ohio-6616, 864 N.E.2d 145, ¶16.

³ *De Cavel v. DCHW, L.L.C.*, 1st Dist. No. C-100221, 2011-Ohio-549, ¶16, jurisdictional motion overruled, 128 Ohio St.3d 1516, 2011-Ohio-2686, 948 N.E.2d 451.

OHIO FIRST DISTRICT COURT OF APPEALS

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., HILDEBRANDT and FISCHER, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 24, 2011

per order of the Court _____.
Presiding Judge